

NOTICE OF PROPOSED MODIFICATIONS AGENCY FEE REGULATIONS

Pursuant to the requirements of Government Code section 11346.8(c), and section 44 of Title 1 of the California Code of Regulations, the Public Employment Relations Board (PERB) is providing Notice of Proposed Modifications to proposed regulations that were the subject of a public hearing on February 8, 2007. These proposed modifications are in response to public comments received regarding the initial rulemaking proposals.

The proposed modifications (see attached) affect the following sections:

32994. **Exclusive Representative's Challenge Agency Fee Appeal Procedure.**

[Subsections (a) and (b).]

32995. Escrow of Agency Fees ~~in Dispute.~~

[Subsections (b) and (c).]

32996. Filing of *Notice and* Agency Fee Appeal Procedures.

The proposed text, as published on December 1, 2006, showed new language in **bold**, and deletions by use of strikethrough (~~strikethrough~~). New language in the proposed revisions is in ***bold italics*** and new deletions are indicated by double strike through (~~double strike through~~).

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed changes. Please limit any comments to the proposed modifications attached to this notice. The written comment period commences on February 26, 2007 and closes at 5:00 p.m. on April 6, 2007. Submit written comments to:

Les Chisholm, Division Chief
Office of the General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814
FAX: (916) 327-6377
E-mail: LChisholm@perb.ca.gov

Any questions regarding the proposed action or the substance of the proposed regulations should be directed to:

Les Chisholm, Division Chief
Office of the General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814
(916) 327-8383

or

Tami R. Bogert, General Counsel
Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814
(916) 327-8381

New language in the proposed revisions is in ***bold italics*** and new deletions are indicated by double strike through (~~double strike through~~).

PROPOSED MODIFICATIONS

32994. **Exclusive Representative's Challenge Agency Fee Appeal Procedure.**

(a) ~~If an~~ **An** agency fee payer **who** disagrees with the exclusive representative's determination of the **chargeable expenditures contained in the** agency fee amount, ~~that employee (hereinafter known as an "agency fee challenger objector") may file an~~ **and who files a timely agency fee challenge with the exclusive representative, shall be hereafter known as an "agency fee challenger."** ~~Such agency fee objection shall be filed with the exclusive representative.~~ An agency fee **challenger objector** may file an unfair practice charge that challenges the **determination of the chargeable expenditures contained in the agency fee amount** ~~amount of the agency fee~~; however, no complaint shall issue until the agency fee **challenger objector** has first exhausted the ~~exclusive representative's~~ **Exclusive Representative's Challenge Agency Fee Appeal Procedure**. No **agency fee challenger objector** shall be required to exhaust the **Exclusive Representative's Challenge Agency Fee Appeal Procedure** where it is insufficient on its face.

(b) Each exclusive representative that has an agency fee provision shall administer ~~an Agency Fee Appeal~~ **a Challenge** Procedure in accordance with the following:

(1) ~~A~~ **An** agency fee ~~objection~~ **challenge** shall be initiated in writing and shall be filed **in writing** with ~~an~~ **the** official ~~of~~ **designated by** the exclusive representative ~~who has authority to resolve agency fee objections~~ **challenges in the annual notice**.

(2) **The procedure shall allow at least** ~~An agency fee objection shall be filed not later than~~ 30 days following distribution of the notice required under Section 32992 of these regulations **for the filing of an agency fee challenge**.

(3) ~~Within 45 days of the last day for filing an objection under Section 32994(b)(2) of these regulations and upon~~ **Upon** receipt of the employee's **an agency fee challenge** ~~objection~~, the exclusive representative shall **within 45 days of the last day for filing a challenge** request a prompt hearing regarding the agency fee before an impartial decisionmaker.

(4) The impartial decisionmaker shall be selected by the American Arbitration Association or the California State Mediation Service. The selection between these entities shall be made by the exclusive representative.

(5) Any party may make a request for a consolidated hearing of multiple agency fee **challenges** ~~objections~~ based on case similarities, including but not limited to, hearing location. At any time prior to the start of the hearing, any party may make a motion to the impartial decisionmaker challenging any consolidation of the hearing.

(6) The exclusive representative bears the burden of establishing the reasonableness of the amount of the **chargeable expenditures** ~~agency fee~~.

(7) Agency fee **challenge** ~~objection~~ hearings shall be fair, informal proceedings conducted in conformance with basic precepts of due process.

(8) All decisions of the ~~agency fee~~ impartial decisionmaker shall be in writing, and shall be rendered no later than 30 days after the close of the hearing.

(9) All hearing costs shall be borne by the exclusive representative, unless the exclusive representative and the agency fee **challenger** ~~objector~~ agree otherwise.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5 and 71814, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.

32995. Escrow of Agency Fees ~~in Dispute~~.

~~(a) The exclusive representative shall open an account in any independent financial institution in which to place in escrow either:~~

~~(1) Agency fees to be collected from nonmembers who have filed timely agency fee objections pursuant to Section 32994(b)(2) of these regulations; or~~

~~(2) Agency fees collected from nonmembers receiving concurrent notice with the initial agency fee collection provided in Section 32992(c)(2) of these regulations.~~

~~(b) Escrowed agency fees that are being challenged shall not be released until after either:~~

~~(1) Mutual agreement between the agency fee objector and the exclusive representative has been reached on the proper amount of the agency fee; or~~

~~(2) The impartial decisionmaker has made his/her decision, whichever comes first.~~

~~(c)~~

(a) If agency fee objectors are identified before fee collection begins for the agency fee year, there shall be an advance reduction in fees and/or advance rebate for those agency fee objectors.

(b) If agency fees are collected before agency fee objectors are identified, the exclusive representative shall place in escrow, *in an independently controlled escrow account*, in an independent financial institution, all agency fees collected until the exclusive representative provides appropriate rebates and/or fee reductions for agency fee objectors.

(c) If not otherwise escrowed, the exclusive representative shall place in escrow, *in an independently controlled escrow account*, in an independent financial institution, all agency fee amounts *reasonably* in dispute until all agency fee challengers are identified and, thereafter, continue to escrow the amounts in dispute for all agency fee challengers until the challenges are resolved by the impartial decision maker or mutual agreement between the agency fee challenger and the exclusive representative has been reached on the proper amount of the agency fee, whichever comes first.

(d) Interest at the prevailing rate shall be paid by the exclusive representative on all rebated fees.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5 and 71814, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292 and Grunwald v. San Bernardino Unified School District (9th Cir. 1990) 994 F.2d 1370, *cert. denied*, 510 U.S. 964 (1993).

32996. Filing of Agency Fee Appeal Procedure.

The Board may require an exclusive representative with an agency fee ~~agreement or provision~~ to file a copy of its ~~Agency Fee Appeal Procedure~~ ***annual notice, Objection Procedure and/or Challenge Procedure*** with the Board.

Authority cited: Sections 3509(a), 3513(h), 3541.3(g), 3563(f), 71639.1(b) and 71825(b), Government Code, and Section 99561(f), (h), (m), Public Utilities Code. Reference: Sections 3502.5, 3515.7, 3540.1(i), 3543, 3546, 3583.5, 71632.5 and 71814, Government Code; Section 99566.1, Public Utilities Code; and Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292.